U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 2 2 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner is a Christian religious organization. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a spiritual director. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director additionally found that the petitioner had not established how it intends to compensate the beneficiary. The AAO, in its October 4, 2012 dismissal, agreed with the director's determinations.

On motion, the petitioner submits a brief from counsel, profiles of the beneficiary from www.linkedin.com and www.slaverynomore.org, an email from the executive director of , copies of the beneficiary's bank statements from August to December of 2009, printouts regarding Evangelical Christians from several websites, internal records of donations received by the petitioning organization for the beneficiary's support between December 2009 and September 2012, a copy of a financial statement covering the petitioner's financial activities from July 2011 to March 2012, copies of the beneficiary's paystubs from March 2012 to September 2012, and copies of documents previously submitted.

In the decision dismissing the petitioner's original appeal, the AAO specifically and thoroughly discussed the petitioner's evidence and determined that the petitioner had not established eligibility for the benefit sought, in part based on the petitioner's failure to establish that the beneficiary had the requisite two years of continuous qualifying work experience immediately preceding the filing of the petition. The AAO noted that, while the petition was filed on October 7, 2011, the evidence indicated that the beneficiary did not begin working for the petitioner until he was granted employment authorization beginning November 12, 2009, more than a month after the beginning of the two-year qualifying period. The AAO found that the petitioner failed to establish that this month would qualify as an acceptable break under the regulation at 8 C.F.R. § 204.5(m)(4). Additionally, the AAO noted that the beneficiary was employed by the petitioner as a "paid consultant" from November 12, 2009 until June 30, 2011, but found that the petitioner failed to establish that such employment constituted qualifying religious work. The AAO quoted a description of the beneficiary's duties provided by the petitioner, but found that the petitioner failed to provide evidence that the position described is recognized as a religious occupation within the denomination of Evangelical Christianity and additionally failed to indicate its requirements for the position in order to establish that the beneficiary's qualification according to the denomination's standards.

In its decision, the AAO additionally agreed with the director's determination that the petitioner

failed to establish its ability to compensate the beneficiary. The AAO noted that the petitioner indicated at the time of filing that the beneficiary would receive $28,000 per year as salary and an additional $27,900 per year to be raised through individual global missionary support. The AAO agreed with the director's determination that the petitioner failed to submit evidence regarding the portion of the beneficiary's compensation which will purportedly come from individual global missionary support. Counsel argued on appeal that, as the salary was sufficient to support the beneficiary without raising additional support, "there was no need to provide evidence of any additional income he would receive through missionary support." The AAO disagreed with counsel's interpretation, stating the following:

> The regulation at 8 C.F.R. § 204.5(m)(7)(vi) requires the petitioner to attest to the "complete package" of compensation being offered and the regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to provide, as initial evidence, verifiable evidence of how the petitioner intends to compensate the alien. Therefore, the petitioner must set forth the intended salaried or non-salaried compensation at the time of filing and provide evidence in support of its ability to provide such compensation. The regulations do not state that the petitioner can discharge this responsibility by arranging for third parties to compensate the alien.

The AAO also found that the petitioner had failed to establish its ability to provide the $28,000 salary portion of the beneficiary's compensation. The AAO noted that the petitioner's Internal Revenue Service (IRS) documentation was uncertified, and that much of the evidence submitted was not verifiable. The AAO also found that the IRS documentation showed compensation of less than $28,000 from the petitioner during 2009 and 2011, and that the petitioner failed to resolve an inconsistency between the amount listed on the beneficiary's Form 1099-MISC for 2010 and the amount listed on his official Social Security Administration (SSA) transcript for that year.

On motion, regarding the portion of the qualifying period between October 7, 2009 and November 12, 2009, counsel for the petitioner asserts that previously submitted evidence "shows that the beneficiary has been operating as an ordained pastor under the auspices of [redacted] (a British religious organization) since 2004 and continues to operate as such to date." The petitioner submits an email from the executive director of [redacted] stating that the beneficiary served as a pastor for that organization throughout the period in question. The petitioner also submits copies of the beneficiary's bank statements from August to December 2009 highlighting various deposits from [redacted] The AAO notes that, as the petitioner has indicated that the beneficiary was present in the United States but does not submit any evidence to show that the beneficiary held employment authorization between October 7, 2009 and November 12, 2009, any employment during that period would not be considered qualifying experience under the regulation at 8 C.F.R. § 204.5(m)(11).

With regard to the AAO's finding that the petitioner failed to establish that the beneficiary's employment as a consultant constituted qualifying religious work, counsel argues that the beneficiary's duties were those of a "Spiritual Director" and that the term "paid consultant" was only used to indicate that the beneficiary was not a salaried employee, but rather received

compensation through a Form 1099. In order to demonstrate that the position of spiritual director is recognized within the Evangelical denomination, the petitioner submits printouts about Evangelical Christianity from several websites, including an article about spiritual direction from the [redacted] Counsel asserts that the denomination sets "no formal standards for the position, but that the petitioner requires "ordination in a religious organization, and pastoral and/or missions experience." Counsel asserts that such requirements were implied in the petitioner's description of the beneficiary's qualifications for the proffered position in a letter accompanying the petition. The AAO notes that at no time has the petitioner previously indicated that the beneficiary served as a spiritual director during his time as a paid consultant for the petitioning organization. Further, in a January 20, 2012 letter responding to a Request for Evidence, the petitioner's description of the beneficiary's duties as a consultant differed from the description provided for his prior work as a salaried employee and from the description of his proposed duties as a spiritual director provided at the time of filing the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regarding the petitioner's ability to compensate the beneficiary, counsel again argues that the regulations do not require the petitioner to provide evidence regarding the complete package of compensation to be provided, only the portion to be provided by the petitioner. Alternately, counsel submits additional "evidence of the global missionary support that the beneficiary has raised to date" in the form of the petitioner's internal records of external donations received for the beneficiary's support. With respect to the petitioner's ability to pay the salary of $28,000, counsel notes that 8 C.F.R. § 204.5(m)(10) lists "budgets" as a possible form of evidence of the petitioner's ability to compensate. Counsel argues: "We wish to contend that if an internally produced document such as a budget is acceptable as evidence so much more should earning statements be acceptable, in that they provide details of amounts paid and amounts withheld." The AAO notes that the regulation at 8 C.F.R. § 204.5(m)(10) additionally states that IRS documentation "such as IRS Form W-2 or certified tax returns" must be provided if available, or else "an explanation for its absence must be provided, along with comparable, verifiable documentation." The petitioner does not address the AAO's finding that the petitioner's IRS documentation was uncertified, nor does the petitioner address the discrepancy between the IRS documentation for 2010 and the SSA record. The petitioner submits the beneficiary's earnings statements for 2012 and a financial statement covering July 2011 to March 2012.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.[1]

[1] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). All of the evidence submitted on motion was either previously submitted or was previously available and could have been provided on appeal. The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record. The petitioner's arguments on motion are not new facts and the evidence submitted on motion is not "new" and, therefore will not be considered a proper basis for a motion to reopen.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden. The motion to reopen will be dismissed.

In the motion to reconsider, the petitioner reiterates prior arguments and makes new arguments which, for the reasons discussed above, the AAO finds unconvincing. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

The motion to reconsider does not allege that the issues, as raised on appeal, involved the application of precedent to a novel situation, or that there is new precedent or a change in law that affects the AAO's prior decision. Instead, the petitioner generally reiterates prior arguments and makes new, unsupported arguments. As noted above, a motion to reconsider must include specific allegations as to how the AAO erred as a matter of fact or law in its prior decision, and it must be supported by pertinent legal authority. Because the petitioner has failed to raise such allegations of error in its motion to reconsider, the AAO will dismiss the motion to reconsider.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated October 4, 2012, is affirmed, and the petition remains denied.